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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR   | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|------------------------|---------------------|------------------|
| 10/602,432      | 06/24/2003  | Stephen Paul Zimmerman | 8981M               | 9639             |

27752 7590 10/01/2004

THE PROCTER & GAMBLE COMPANY  
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EXAMINER

NOLAN, SANDRA M

ART UNIT PAPER NUMBER

1772

DATE MAILED: 10/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/602,432             | ZIMMERMAN ET AL.    |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Sandra M. Nolan        | 1772                |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3-31-04</u> .   | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Claims***

1. Claims 1-18 are pending.

### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on 31 March 2004 was considered by the examiner.

### ***Claim Objections***

3. Claim 6 is objected to because of the following informalities: in line 2, "packages" is spelled incorrectly. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 5 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 5 and 11 limit the amount of 8-nonenal to 0 to 1900 ppt and 0 to 1800 ppt, respectively. However, claim 1, from which they depend, limits the amount of 8-nonenal to 0 to 400 ppt.

Please clarify the claims.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-15 and 17-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Odorisio et al (US 2003/0139497A1).

Odorisio teaches containers made of polyester or polyamide (abstract) that contain less than 4.2 ppm acetaldehyde (tables on pages 14 and 15). The taste of water stored in the containers is not altered (par. 0140). Antioxidants may be used in compositions from which the containers are made. The containers have a single layer (par. 0060).

The absence of 8-nonenal from the Odorisio containers would be inherent property given the fact that plastics containers only minute amounts of aldehydes are used to make them.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over O in view of the admission at page 2 of the specification.

Odorisio is discussed above.

It fails to teach the use of recycled plastics in its containers.

In the specification, at page 2, second full paragraph, applicants teach the use of recycled plastics in packaging to lower the cost thereof, but notes that plastic off flavor can be caused by such use.

It is well known in the container art that placing layers between a layer that may contain a contaminant the contents will serve to reduce the migration of contaminants into the contents.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ the recycled plastic discussed in the specification in the containers of Odorisio in order to lower the cost thereof.

The motivation to employ the recycled plastic of the specification is found at page 2, second full paragraph, of the specification, where the lowering of cost is taught.

It is deemed desirable to make containers at lower costs in order to increase profits.

11. Claims 1-15 and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Odorisio in view of Chaen et al (US 6,268,353).

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Odorisio is discussed above. It fails to recite nonenals.

Chaen teaches nonenals as volatile aldehydes (col. 3, lines 21-30, especially line 29) whose formation is to be inhibited (col. 1, lines 11-14) because of odor (col. 1, line 66 through col. 2, line 8).

The references are analogous because they both deal with inhibiting aldehydes.

It would have been obvious to inhibit the formation of all volatile aldehydes, such as the nonenals of Chaen, in the containers of Odorisio in order to minimize the odors therein.

The motivation to inhibit the formation of Chaen's aldehydes is found at col. 1, line 66 through col. 2, line 8, where the undesirable odor is taught.

It is deemed desirable to make containers that have minimal amounts of all odor-causing aldehydes so that the flavor of food or beverages therein is not adversely affected by the aldehydes.

12. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trouilhet (US 5,750,611) in view of Chaen.

Trouilhet teaches that odors in thermoplastic films for packaging can be eliminated by adding adsorbents to the plastic compositions. The films have low levels of aldehydes.

It fails to teach nonenals.

Chaen is discussed above.

The references are analogous because they both deal with the elimination of undesirable aldehydes.

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It would have been obvious to one having ordinary skill in the art at the time of the invention to employ the adsorbents of Trouilhet to counteract the effects of the aldehydes of Chaen in packages made from Trouilhet's compositions.

The motivation to employ the films of Trouilhet to eliminate the Chaen aldehydes is found at col. 1, line 66 through col. 2, line 8 of Chaen, where the nonenals are said to produce bad odors.

It is deemed desirable to make containers that have minimal amounts of all odor-causing aldehydes so that the flavor of food or beverages therein is not adversely affected by the aldehydes.

The use of recycled plastics in one or more layers of multilayered packaging to lower the cost of packaging is deemed an obvious engineering/cost saving choice.

13. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobs (US 6,692,800; based on an application filed 15 December 1997) in view of Chaen.

Jacobs teaches packaging materials having coatings thereon to inhibit the migration of aldehydes therefrom (abstract).

It fails to teach nonenals.

Chaen is discussed above.

The patents are analogous because they both teach the reduction of the effects of aldehydes.

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It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ the packaging materials of Jacobs to inhibit the effects of Chaen's nonenals on the contents of the packages.

The motivation to employ the packaging of Jacobs to eliminate the Chaen aldehydes is found at col. 1, line 66 through col. 2, line 8 of Chaen, where the nonenals are said to produce bad odors.

It is deemed desirable to make containers that have minimal amounts of all odor-causing aldehydes so that the flavor of food or beverages therein is not adversely affected by the aldehydes.


The use of recycled plastics in one or more layers of multilayered packaging to lower the cost of packaging is deemed an obvious engineering/cost saving choice.

### ***Conclusion***

Any inquiry concerning this communication should be addressed to Sandra M. Nolan, at telephone number 571/272-1495. She can normally be reached Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time.

If attempts to reach the examiner are unsuccessful, her supervisor, Harold Pyon, can be reached at 571/272-1498.

The fax number for patent application documents is 703/872-9306.



S. M. Nolan  
Primary Examiner  
Technology Center 1700

10602432(20020927)